IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.358 OF 1990

The State of Maharashtra .. Appellant.

V.

1.Babu Mariya Irim
2.Vansha Raghya Hadal
Both residing at Vasa,
Pada, Taluka Talasari,
Dist.Thane .. Respondents.

Shri D.S.Mhaipurkar A.P.P. for the appellant/State.

Shri K.K.Malpathak for the respondents.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.

DATED : 7th July, 2005.

JUDGMENT: (PER D.B.BHOSALE, J.)

1. The State has filed this appeal against the judgment and order dated 16th January, 1990 rendered by the Additional District and Sessions Judge, Thane in Sessions Case No.476 of 1987 by which all the three accused have been acquitted. The accused were charged and tried for the offences punishable under sections 457, 307, 326 and 324 read with section 34 of the Indian Penal Code on the allegations that on 12.1.1987 at 2.00 a.m. at village Dhamangaon they forcibly entered in the

house of Babu Kakdya and attempted to commit murder of Suresh Babu by means of axe and voluntarily caused hurt to Chandrakant Mahadeo.

2. Briefly stated, the alleged incident took place on 12.1.1987 at 2.00 a.m. at village Dhamangaon. This incident occurred in the house of the complainant - Chandrakant when all inmates of the house were sleeping. At 2.00 a.m. the accused persons broke open the door of the house. Accused No.1 was armed with axe and accused no.2 was armed with stick. There was hue and cry when they entered the house. Accused no.2 - Vanshya assaulted the complainant - Chandrakant by means of a stick on his legs while accused no.1 - Babu assaulted Suresh, brother-in-law of the complainant, on his head with axe. According to the prosecution at the relevant time the complainant was sleeping in the front room with his wife and daughter while Suresh was sleeping in the kitchen. When the accused entered in the house, Suresh came to the outer room where accused no.1 - Babu assaulted him with an axe. Immediately after inflicting blows they fled. Next day morning, Suresh was taken to Talasari police station by bullock cart from where he was sent to Cottage Hospital. The injury sustained by Suresh was of

serious nature and he was hospitalised for more than a month. Chandrakant lodged the FIR on 12.1.1987 at about 4.00 p.m. In pursuance of the said complaint the offence against the accused persons came to be registered under sections 307, 452 and 326 of the Indian Penal Code. The Police Inspector - V.G.Rane set the investigation in motion and arrested the accused in the midnight on 13.1.1987. After completing the entire investigation he filed chargesheet on 16.7.1987 against the accused in the court of Judicial Magistrate, First Class at Dahanu. The case was committed to the court of Sessions vide order dated 31.8.1987. The defence propounded by the accused persons was of total denial. They pleaded not guilty. To bring home the guilt of the accused, the prosecution examined ten witnesses mainly consisting of the complainant (PW.2), victim - Suresh (PW.3), Panch - Dattu Dama Shanwar (PW.1), the father of Suresh, Babu Kakdya (PW.4) and Dr.Suresh Mahavalkar (PW.8).

3. We heard learned counsel appearing for the parties and with their assistance perused the impugned judgment, testimonies of all the witnesses, injury certificates of Chandrakant and Suresh bearing Exhibits 17 and 16 respectively and

other evidence led by the prosecution. The learned Assistant Public Prosecutor took us through the evidence of Chandrakant (PW.2), Suresh (PW.3), Babu Kakdya (PW.4) and panchnama of the scene of offence as also panch witness Dattu Shanwar (PW.1) in particular and vehemently contended that totality of the evidence clearly points to the guilt of the accused persons. He submitted that the testimonies of the complainant - Chandrakant (PW.2), Suresh (PW.3) and Babu (PW.4) clearly prove that the accused assaulted Suresh and Chandrakant since they were suspecting that the complainant - Chandrakant was opposing them in the village. He further submitted that the witnesses were knowing the accused persons and at the relevant time there was sufficient light in the house and, therefore, there was no scope to commit any error as to the identity of the accused. According to the prosecution the daughter of Chandrakant was infant and, therefore, he had kept a light on, in which they could see and identify accused persons. He next submitted that there was no reason for the witnesses to falsely implicate the accused persons. Our attention was also invited to the injury certificates to show that Suresh sustained severe injury which could have caused his death had he not been treated on time. The learned trial Judge, according to the

A.P.P. acquitted the accused merely because the doctor, who issued injury certificate, was not examined to prove the injury sustained by Suresh, overlooking the fact that Suresh was hospitalised for more than one month and the injury certificate was placed on record. The conclusions arrived at by the trial Court, according to the learned A.P.P., are perverse and, therefore, liable to be set aside.

4. On the other hand Mr.Malpathak, learned counsel for the respondent-accused submitted that the trial Court assessed the evidence in proper prespective and has reached the conclusion which cannot be termed as perverse. He further submitted that in any case merely because on reappraisal of evidence in appeal against acquittal, other view is possible, this Court is not expected to interfere with the conclusion arrived at by the trial Court unless the impugned judgment is sufferring from manifest illegality and is held to be perverse. He placed reliance upon the judgment of the Apex Court reported in AIR 1987 SC Page 1083 and AIR 1977 SC Page 135 in support of his contentions. He next submitted that the trial Court after considering the evidence of PW.2, PW.3 and PW.4 has held that there was no sufficient light and it was not

possible for the witnesses to identify the accused and, therefore, they cannot be connected with the alleged occurence. He further submitted that there is absolutely no other material to connect the accused persons with the alleged occurence and, therefore, the learned Judge has rightly acquitted them of the charges.

5. We perused the evidence of Chandrakant (PW.2). At the relevant time he was sleeping in the front room adjacent to the kitchen with his wife and daughter. Since his daughter was infant they had kept the light on. At about 2.00 a.m. the accused broke open the door and started saying that why he (Chandrakant) was opposing them in the village and by saying so accused no.2 - Vanshya inflicted stick blow on his legs. His wife tried to cover him. In the meantime he rushed to the kitchen. On hearing hue and cry Suresh, who was sleeping in the kitchen, came out, when accused no.1 - Babu inflicted axe blow on his head. He instantly fell down and become unconscious. It has further come in the evidence that after inflicting a blow on the head of Suresh both the accused fled. Next day in the afternoon Suresh was taken to Talasari police station and from there he was referred to Bhagwati hospital at Bombay. He has

specifically stated that since there was sufficient light in the room he could identify the accused. In the cross examination he has stated that 3-4 months prior to the occurrence there was a dispute between him and the accused over the use of the funds collected by the accused persons from the villagers. Besides, there was no murmuring between the accused and Chandrakant. In the examination in chief, Chandrakant has stated that there was a light in the room in which he could identify the accused. Suresh (PW.3) has stated that when he came out of the kitchen Babu - accused no.1 inflicted axe blow on his head. He instantly fell down and became unconscious. He could identify the accused in electric light in the house. Chandrakant (PW.1) has, however, not made any reference to the electric light in the house. Over and above this Suresh has not stated anything more about the actual occurrence. He had not seen the assault on Chandrakant. In the cross examination he has specifically stated that his sister was engaged with Chandrakant but they had not married. It appears from the testimony of Suresh that the house where the alleged incident occurred was surrounded by the house of Usman, Mitha Wedga, Barkya Wanged and Babu Ravji Bangad. Some neighbours had also assembled after the alleged

occurrence. The evidence of Babu (PW.4) shows that he could see accused persons inflicting stick blow on the leg of Chandrakant. He has stated that he was also sleeping the front room where Chandrakant was sleeping with his wife. That was not even the stand of Chandrakant or Suresh. In the evidence of the victims and eye witnesses we found several omissions, discrepancies and contradictions which undoubtedly create doubt about the veracity of their versions. The learned trial Judge while appreciating the evidence has taken them into consideration and discarded their evidence. Moreover, the alleged motive as suggested by Chandrakant in his testimony has not been established by the prosecution. In fact from the testimony of Chandrakant, it is clear that the accused had no reason to assault Suresh. If the prosecution case in so far as the motive is concerned, was correct, the accused would have made Chandrakant a main target. It was not difficult for the accused persons to assault Chandrakant by chasing him upto kitchen. The accused were two adult male members whereas Chandrakant and his wife were the only persons sleeping in the outer room where first blow of stick was inflicted on Chandrakant’s leg. The accused could have assaulted him then and there only with an axe and

could have inflicted more blows. There was no reason for them to spare him, if the alleged motive was true. Suresh was given one blow with an axe which caused severe injury on his head. It was not the case of the prosecution that Suresh was assaulted because he attempted to rescue or save Chandrakant or tried to resist the attack. The learned trial Judge after considering the testimonies of the victims and the eye witnesses and the injury certificates of the victims seems to have disbelieved the testimony of Chandrakant and as also the alleged motive for committing the crime. So far as the claim of the witnesses that there was sufficient light in the room in which they could see the accused persons is concerned the complainant has categorically stated that his daughter was infant and, therefore, they used to keep light on and on the fateful night also the light was on in which they could see the accused persons and identify them. Though the complainant has stated so Suresh (PW.3) in cross examination has categorically stated that his sister was engaged with the complainant and they had not married. If what Suresh has stated is true the whole story narrated by Chandrakant that he was sleeping with his wife and daughter becomes unreliable. Babu (PW.4), father in law of the

complainant has stated that some persons were standing outside the house at the relevant time. He could not identify them as there was dark outside. From the testimony of father-in-law of the complainant, it appears to us that the complainant is not speaking the whole truth and is undoubtedly suppressing some material facts from the Court. The manner in which the alleged incident occurred, and the time and place of incident, it creates doubt about the availability of light in the room. Except the complainant no other witness has stated that the light in the front room was kept on since the child of Chandrakant was infant. It is against this backdrop the trial Court has arrived at conclusion that there was no sufficient light in the room and, therefore, the version of the complainant that he could see the accused has been disbelieved. The complainant's evidence is artificial and not free from any ambiguity. One more circumstance made us to reach this conclusion. It has come in the evidence that some neighbours had gathered at the scene of offence. Similarly, Babu (PW.4) contacted Police Patil at 8.00 a.m. in the morning and informed him about the incident. The prosecution chose not to examine any of the neighbours or Police Patil in support of its case. Police Patil

would have been the best witness to state as to what exactly happened that night. No explanation whatsoever is forthcoming as to why Police Patil was not examined by the prosecution. The evidence of the complainant (PW.1) and Suresh (PW.2) has been discarded by the trial Court. We find no reason to interfere with the conclusion arrived at by the trial Court that there was no sufficient light available in the room in which the alleged incident occurred so as to identify the assailants. The discrepancies, omissions and contradictions in the evidence of all the eye witnesses undoubtedly create doubt about the identify of the accused. The trial Court has rightly held that the prosecution failed to prove the case against the accused beyond reasonable doubt.

6. In our opinion, this is not a fit case in which this Court should interfere and convert the order of acquittal into conviction. It cannot be said that the conclusion arrived at by the trial Court could not have been possibly arrived at by any Court acting reasonably and judicially and is, therefore, liable to be characterised as perverse. The view taken by the trial Court was plausible one and merely because on reappraisal of evidence it is possible to take different view it is not open to

do so in view of the settled position of law. The Apex Court in several judgments, including the judgments cited by Mr.Malpathak, has held that the Appellate Court in an appeal against acquittal has to act cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interefered with or disturbed. Such is not the case in hand. In any case the conclusion arrived at by the trial Court cannot be stated to be perverse. There is no substantial omission to consider the evidence on record or that the view taken by the trial Court is impermissible on the evidence on record. In any case, if the order of acquittal is allowed to stand it will not result in the miscarriage of justice. We find no reason to interfere with the judgment of the acquittal after 17 years. We, therefore, dismiss the appeal. Bail Bonds, if any, executed under section 390 of Criminal Procedure Code stand cancelled.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)